

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

AMIE R. RATCLIFF

Claimant

VS.

**FORT SCOTT UNIFIED SCHOOL
DISTRICT, USD 234**

Respondent

AND

SENTINEL INSURANCE CO., LTD.

Insurance Carrier

Docket No. 1,060,538

ORDER

STATEMENT OF THE CASE

Claimant requests review of the October 2, 2013, Award entered by Administrative Law Judge (ALJ) Brad E. Avery. The Board heard oral argument on January 14, 2014. Patrick C. Smith of Pittsburg, Kansas, appeared for claimant. John M. Graham, Jr. of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

The ALJ found claimant's date of accident for her repetitive trauma to be December 21, 2010, the date Dr. John B. Moore IV completed a work status form. According to the ALJ, claimant already knew she had a work-related condition, and Dr. Moore's work status form provided written communication or confirmation that her condition was work-related, triggering the date of accident under K.S.A. 2010 Supp. 44-508(d). The ALJ found the impairment evaluations of Drs. Ketchum and Prostic more credible than that of Dr. Moore, and therefore gave equal deference to the ratings of Drs. Ketchum and Prostic, resulting in claimant having a functional impairment of 10 percent to the right upper extremity and 12.5 percent to the left upper extremity at the 200-week level. Further, although claimant suffered bilateral upper extremity injuries, the presumption she is permanently and totally disabled has been rebutted because claimant remains employed with respondent. The ALJ determined claimant is entitled to future medical care upon application and review, and unauthorized medical care up to the applicable statutory limit.

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant contends the ALJ erred in his determination of the date of accident. Claimant argues the date of accident is August 18, 2011, the day she was first taken off work.

Respondent maintains the ALJ's Award should be affirmed. While claimant was provided further treatment in the form of surgery after May 15, 2011, respondent argues finding the date of accident to be August 18, 2011, would constitute a retroactive application of the statute without a clear mandate from the legislature to do so. Respondent defers to the findings of the ALJ regarding nature and extent of claimant's impairment.

The issue for the Board's review is: What is claimant's date of accident?

FINDINGS OF FACT

Claimant has been employed by respondent full-time since 2005 and currently holds the position of office manager. In this position, claimant performs such duties as scheduling, filing, data entry, and activities with children. Claimant testified she could be required to enter data on the computer three to seven hours a day, depending on the caseload. Claimant also assists the children with crafts, including cutting material with scissors.

Claimant testified she first began having complaints with her hands in February 2010. Both of claimant's hands would tingle and become numb, eventually worsening to the point where she would lose her grip and drop items. Claimant stated she did not have these symptoms prior to her employment with respondent. She had no testing of her upper extremities, hands, or wrists prior to February 2010.

Claimant first visited her family doctor, Dr. Maxwell Self, shortly after the onset of her symptoms. Dr. Self referred claimant to Dr. Terry Schwab. Claimant testified she informed both doctors she believed her upper extremity problems were work-related. Neither doctor gave claimant restrictions as a result of her upper extremities. On March 2, 2010, claimant saw Dr. Devendra Jain, who performed an EMG. Dr. Jain diagnosed claimant with bilateral carpal tunnel syndrome. Claimant was then referred by the workers compensation carrier to Dr. John B. Moore IV.

Dr. Moore, a physician and surgeon, is board certified in plastic surgery with an added certificate of qualification for hand surgery. Dr. Moore first saw claimant on December 21, 2010, and performed a physical examination. Claimant signed a work

status form on this date, indicating she understood she was released to full duty with no restrictions pending surgery.

Dr. Moore's impression was bilateral mild carpal tunnel symptoms aggravated by work activities, but not caused by work activities. He initially treated claimant conservatively with night splints and oral Naproxen. When conservative treatment failed to relieve claimant's symptoms, he determined claimant should undergo bilateral endoscopic carpal tunnel release.

Claimant's first surgery with Dr. Moore, a left endoscopic carpal tunnel release and removal of ganglion cysts, was performed August 18, 2011. Dr. Moore performed a second procedure on October 20, 2011, a right endoscopic carpal tunnel release and removal of a palmar wrist ganglion cyst. Dr. Moore took claimant off work for the first time following her August 18, 2011, surgery and placed restrictions on claimant lasting approximately three weeks following each surgery. He saw claimant again on February 3, 2012, reporting claimant had healed well and was at maximum medical improvement. Using the *AMA Guides*,¹ Dr. Moore indicated claimant suffered a zero percent impairment and had no restrictions on February 3, 2012. Dr. Moore did not foresee any future medical needs.

Dr. Edward J. Prostic, a board certified orthopedic surgeon, examined claimant at her counsel's request on June 8, 2012. After reviewing claimant's history, medical records, and performing a physical examination, Dr. Prostic determined:

From repetitious minor trauma during the course of her employment, [claimant] developed bilateral carpal tunnel syndrome, stenosing tenosynovitis, and ganglion cyst. She has had good response to surgery. Her predominant left hand symptoms are most likely coming from flexor tenosynovitis. Steroid injections may be considered. As she is, permanent partial impairment is rated at 10 [percent] of the right upper extremity and 15 [percent] of the left upper extremity.²

Dr. Prostic, in a letter to claimant's counsel dated December 5, 2012, further opined claimant's repetitive trauma while working at respondent was the prevailing factor in causing the injury, medical condition, need for medical treatment, and the resulting disability or impairment. Dr. Prostic testified he used the *AMA Guides* in his analysis.

Dr. Lynn D. Ketchum examined claimant on August 8, 2013, at the ALJ's request. Dr. Ketchum diagnosed claimant with mild residual carpal tunnel syndrome with weakness on the left, stenosing tenosynovitis of the left third digit, mild de Quervain's syndrome of

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

² Prostic Depo., Ex. 2 at 2.

the left distal forearm and wrist, and intersection syndrome of the right distal forearm. Dr. Ketchum recommended a series of Kenalog injections to relieve her symptoms, a process that can be completed in one setting. Using the *AMA Guides*, Dr. Ketchum opined claimant has a 10 percent impairment of both upper extremities. Further, he noted the prevailing factor causing claimant's condition is the repetitive work she performed for respondent.

Claimant continues to work at respondent as office manager.

PRINCIPLES OF LAW

K.S.A. 2010 Supp. 44-508(d) states, in part:

In cases where the accident occurs as a result of a series of events, repetitive use, cumulative traumas or microtraumas, the date of accident shall be the date the authorized physician takes the employee off work due to the condition or restricts the employee from performing the work which is the cause of the condition. In the event the worker is not taken off work or restricted as above described, then the date of injury shall be the earliest of the following dates: (1) The date upon which the employee gives written notice to the employer of the injury; or (2) the date the condition is diagnosed as work related, provided such fact is communicated in writing to the injured worker. In cases where none of the above criteria are met, then the date of accident shall be determined by the administrative law judge based on all the evidence and circumstances; and in no event shall the date of accident be the date of, or the day before the regular hearing.

K.S.A. 2011 Supp. 44-508(e), states, in part:

In the case of injury by repetitive trauma, the date of injury shall be the earliest of:

- (1) The date the employee, while employed for the employer against whom benefits are sought, is taken off work by a physician due to the diagnosed repetitive trauma;
- (2) the date the employee, while employed for the employer against whom benefits are sought, is placed on modified or restricted duty by a physician due to the diagnosed repetitive trauma;
- (3) the date the employee, while employed for the employer against whom benefits are sought, is advised by a physician that the condition is work-related; or
- (4) the last day worked, if the employee no longer works for the employer against whom benefits are sought.

In no case shall the date of accident be later than the last date worked.

K.S.A. 2011 Supp. 44-510e(a)(2)(a) states, in part:

Compensation for permanent partial general disability shall also be paid as provided in this section where an injury results in:

(i) The loss of or loss of use of a shoulder, arm, forearm or hand of one upper extremity, combined with the loss of or loss of use of a shoulder, arm, forearm or hand of the other upper extremity;

ANALYSIS

The Board finds the date of accident to be August 18, 2011. The ALJ found the date of accident to be December 21, 2010, based upon a finding that Dr. Moore provided a work status report form on that date. The Board disagrees. Presumably, the ALJ's finding is based upon K.S.A. 2010 Supp. 44-508(d)(2), which states that "the date the condition is diagnosed as work related, *provided such fact is communicated in writing to the injured worker*. [Emphasis added.]"

On December 21, 2010, Dr. Moore prepared a work status report that stated claimant was capable of performing full duty. There is no evidence in the record this document was given to claimant or that it explained to claimant she was diagnosed with a work-related condition. Claimant testified that prior to August 18, 2011, no physician had advised her in writing that her wrist problems were caused by work.³ As such, the date of accident is not December 21, 2010.

K.S.A. 2011 Supp. 44-508(e) provides four options to review to determine the date of accident for repetitive trauma cases, the earliest in time of which is to be the date of accident. In this case, the uncontroverted evidence shows claimant was first taken off work by Dr. Moore on August 18, 2011. Proof that the date of accident is earlier than this date is not found in the record.

The court-ordered examining physician, Dr. Ketchum, assessed an impairment of 10 percent for both arms. Two physicians testified to the nature and extent of claimant's permanent impairment. Dr. Prostic opined claimant experienced a 10 percent impairment to the right upper extremity and a 15 percent impairment to the left upper extremity. Dr. Moore was of the opinion that claimant possessed a zero percent permanent impairment. The ALJ combined the ratings provided by Dr. Prostic and Dr. Ketchum and found claimant suffered a 10 percent impairment to the right upper extremity and 12.5 percent impairment to the left upper extremity. The parties do not dispute this finding.

³ R.H. Trans. at 10.

Based upon the *AMA Guides*, 10 percent impairment of the right upper extremity converts to 6 percent impairment of the whole person. A 12.5 percent impairment of the left upper extremity converts to a 7.5 percent impairment of the whole person.⁴ Utilizing the *AMA Guides*, Combined Values Chart,⁵ a 7.5 percent and 6 percent impairment to the whole person combine to equal a 13.5 percent whole person impairment.

CONCLUSION

Claimant's date of accident is August 18, 2011. Based upon the law in effect on the date of accident, claimant suffers a 13.5 percent whole person impairment as the result of her work-related accidental injuries.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated October 2, 2013, is modified to reflect a date of accident of August 18, 2011, and a 13.5 percent whole person impairment.

The claimant is entitled to 56.03 weeks of permanent partial disability compensation at the rate of \$318.55 per week or \$17,848.36 for a 13.5 percent whole person impairment, making a total award of \$17,848.36.

As of February 13, 2014, there would be due and owing to the claimant 56.03 weeks of permanent partial disability compensation at the rate of \$318.55 per week in the sum of \$17,848.36 for a total due and owing of \$17,848.36, which is ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

⁴ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.) at 20, Table 3.

⁵ *Id.* at 322.

Dated this _____ day of February, 2014.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Brad E. Avery, Administrative Law Judge